

MRS. RANDOLPH G. MUNIZ

IBLA 80-495

Decided April 27, 1981

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring abandoned and void appellant's mining claims the Lucky Chris #1 and #2.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCE: Mrs. Randolph G. Muniz, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Mrs. Randolph G. Muniz appeals from a February 1, 1980, decision of the Colorado State Office, Bureau of Land Management (BLM), which, in effect, declared appellant's mining claims, the Lucky Chris #1 and #2, abandoned and void.

The two claims were located on August 29, 1975. Various documents were submitted for filing under the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), on October 22, 1979. These documents consisted of a map, proof of labor for the 1979 assessment year, and the required remittance of \$5 per claim. In its February 1, 1980, decision BLM returned the filings, noting that no copy of the location notices had been filed and

further indicating that evidence of assessment work had not been filed. Appellant timely appealed this decision.

On appeal, appellant argues that the assessment work was filed timely, but admits that the notices of location were inadvertently omitted from the original filings. Appellant has submitted the notices with her appeal. As regards the proof of assessment work, appellant is clearly correct and the State Office decision is vacated on this point.

[1] With respect to the notices of location, however, section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), required that the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, file "a copy of the official record of the notice of location or certificate of location" on or before October 22, 1979. Section 314(c) provides that failure to comply with the recordation requirements shall be deemed conclusively to constitute an abandonment of the claims. Thus, regardless of the reason for not filing the notices of location, the instant claims must be deemed to be abandoned. This Board has no authority to waive compliance with the statute. See Lynn Keith, 53 IBLA 192, 88 I.D. (1981). The fact that appellant has subsequently submitted the required documents cannot alter this result.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

